

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:18-CV-00345-KDB-DCK**

TRUE HOMES LLC,

Plaintiffs,

v.

CLAYTON HOMES, INC., ET AL,

Defendants.

ORDER

THIS MATTER is before the Court on Defendants Clayton Homes, Inc.; Clayton Property Group, Inc.; Vanderbilt Mortgage & Finance, Inc. and 21st Mortgage Corp.’s Motions to Dismiss (Doc. Nos. 63, 64 and 65). On January 15, 2020 the Court entered an Order granting Plaintiff’s contested motion to file a Second Amended Complaint. (Doc. No. 57). In that Order, the Court directed the parties to focus their litigation efforts “towards an expeditious resolution of the core dispute on the merits of Plaintiff’s claim of trademark infringement.” More, specifically, the Court ordered the parties:

... to meet and confer within the next fourteen (14) days on a schedule that (1) preserves Defendants’ rights to assert all appropriate defenses **but effectively defers Rule 12 practice with respect to the newly added parties (for example, by moving the resolution of such defenses to an omnibus Rule 56 motion)**; (2) sets a reasonable but short period of time to conclude discovery on the primary merits and (3) moves the case efficiently to a final determination of the dispute over trademark infringement, either by dispositive motion, settlement or trial.

Doc. 57 at 3. (emphasis added).

Despite this seemingly clear direction to defer Rule 12 motions until later in the case, the moving Defendants filed the pending motions rather than answering the Second Amended Complaint. The Court has carefully considered these motions and the parties’ briefs and exhibits;

however, in accordance with the Court's earlier order, the Court determines in its discretion and in the interest of judicial management that ruling on the pending motions to dismiss should and will be DEFERRED and postponed until the time of trial or a ruling on any motion for summary judgment filed by Defendants, whichever first occurs. *See* Fed. R. Civ. P. 12(a)(4)(A) and 12(i). All arguments for judgment now appearing in the motions to dismiss should be folded into any summary judgment motion and brief. Defendants shall file their respective answers within 14 days of the date of this Order.

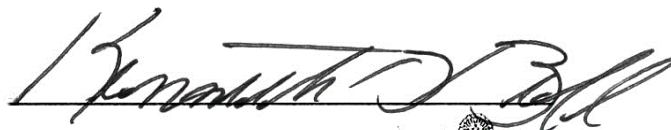
I. ORDER

NOW THEREFORE IT IS ORDERED THAT:

1. The Court's Final Consideration and Ruling on Defendants' pending Motions to Dismiss (Doc. Nos. 63, 64 and 65) is **DEFERRED**;
2. Defendants shall answer the Second Amended Complaint within 14 days of the date of this Order; and
3. This case shall **move forward to the completion of discovery and further proceedings** in the absence of a voluntary resolution of the dispute among the parties.

SO ORDERED ADJUDGED AND DECREED.

Signed: May 5, 2020



Kenneth D. Bell
United States District Judge

